

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>SCOTT SULLIVAN, et al.</b> <b>Plaintiffs,</b>	§ § § § § § § § § § §	<b>CIV. ACT. NO. 4:20-cv-02236</b>  <b>CONSOLIDATED WITH 2021-cv-0658 AND 2021-CV-0682</b>  <b>JUDGE LEE H. ROSENTHAL</b>  <b>JURY TRIAL REQUESTED (9 U.S.C. § 4)</b>
<b>VS.</b>		
<b>STEWART A. FELDMAN, et al.</b> <b>Defendants</b>		

**JOINT MOTION TO DISMISS ANY PURPORTED CLAIMS  
BY THE DOCTORS AND POOLRE**

Plaintiffs, Dr. Scott Sullivan, Dr. Frank DellaCroce, St. Charles Surgical Hospital, LLC, St. Charles Holdings, LLC, Center for Restorative Breast Surgery, LLC, and Sigma Delta Billing, LLC (collectively, the “Doctors”), respectfully requests, pursuant to Federal Rule of Civil Procedure 41, that the Court dismiss with prejudice any claims that may be construed to be pending against PoolRe Insurance Corp. (“PoolRe”) in these consolidated actions. PoolRe respectfully requests that the Court dismiss with prejudice all claims by PoolRe against the Doctors in these consolidated actions. PoolRe and the Doctors consent to the relief requested by one another.

The Doctors expressly reserve all rights and claims they have against Capstone Associated Services, Ltd.; Capstone Associated Services (Wyoming), Limited Partnership; Capstone Insurance Management, Ltd.; Jeff Carlson; Stewart Feldman; and the Feldman Law Firm, LLP (collectively, the “Feldman Parties”). Nothing herein should be construed or interpreted in any manner to release or impact the Doctors’ claims against the Feldman Parties.

The Doctors file this Motion out of an abundance of caution: the underlying state-court petition which was removed to this Court did not name PoolRe as a party.<sup>1</sup> The Doctors have not added PoolRe as a party. The Doctors seek to enforce an arbitration award rendered by Hon. Charles R. Jones which granted relief in favor of the Doctors against multiple parties, including Defendants, as well as PoolRe.<sup>2</sup> The Doctors' Motion to Confirm makes no reference whatsoever to PoolRe. But because the underlying Award rendered by Judge Jones granted judgment in favor of the Doctors and against PoolRe,<sup>3</sup> and found that PoolRe was an alter ego of the Feldman Law Firm and Capstone,<sup>4</sup> the Doctors seek to eliminate any possible uncertainty by moving to dismiss any purported claims against PoolRe with prejudice, pursuant to Rule 41(a).<sup>5</sup>

This Motion is timely: as PoolRe was never formally made a defendant in this matter, it necessarily has not filed either an answer or a motion for summary judgment.<sup>6</sup>

WHEREFORE, the Doctors respectfully request that the Court dismiss with prejudice any claims that may be construed to be pending against PoolRe Insurance Corp. in these consolidated actions, and PoolRe respectfully requests that the Court dismiss with prejudice all claims by PoolRe against the Doctors in these consolidated actions.

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<sup>1</sup> Notice of Removal (filed June 25, 2020) [Doc. 1]; State Court Petition (filed June 17, 2020) [Doc. 1-1].

<sup>2</sup> See Motion to Administratively Re-Open Case, Lift Stay, and Confirm Arbitration Award (filed April 25, 2022) [Rec. Doc. 72]; Arbitration Award (dated March 29, 2022) [Rec. Doc. 72-2].

<sup>3</sup> See Arbitration Award (dated March 29, 2022), at pp. 269-273 [Rec. Doc. 72-2].

<sup>4</sup> See Arbitration Award (dated March 29, 2022), at p. 269 [Rec. Doc. 72-2].

<sup>5</sup> Concurrent with this filing, the Doctors will also file a substitute proposed Final Judgment. The Final Judgment submitted in connection with the April 25, 2022 confirmation award referenced PoolRe insofar as the decretal language in Judge Jones's Award granted relief against PoolRe, and that proposed Final Judgment tracked Judge Jones's Award.

<sup>6</sup> FED. R. CIV. PROC. 41(a)(1)(A)(i).

Respectfully submitted,

/s/ James M. Garner

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served on all known counsel of record through the Court's ECF system on June 2, 2022.

/s/ James M. Garner  
JAMES M. GARNER